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R. S. McKnight v. State Land Board and Erving Wolf : Brief of Defendant

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

R. S. McKNIGHT,
Plaintiff,

vs.

STATE LAND BOARD,
Defendant,

ERVING WOLF,
Intervenor.

Case No. 9728

BRIEF OF DEFENDANT

Review of Decision of State Land Board

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STATEMENT OF THE KIND OF CASE

The instant action is upon a petition for certiorari from the Utah Supreme Court to review a decision of the Utah State Land Board holding that Erving Wolf was entitled to lease certain state lands pursuant to applications filed with the Land Board.

THE PROCEEDINGS BELOW

The Utah State Land Board determined that Erving Wolf was the properly qualified applicant to lease certain state lands, by virtue of a high bid upon simultaneous filings of lease applications under

Section 65-1-45, Utah Code Annotated 1953, by Erving Wolf and others. Thereafter, R. J. Hollberg and Joseph Sherman, also simultaneous applicants, filed a protest with the State Land Board and a full hearing on the protest was held under the provisions of Section 65-1-9, Utah Code Annotated 1953. The Land Board issued Findings of Fact and Conclusions of Law supporting the award of leases to Erving Wolf. The petitioner, R. S. McKnight had, subsequent to the simultaneous filing date, filed applications to lease covering most of the same area as the applications of Erving Wolf. McKnight contended he should be declared the proper lessee applicant. After the Land Board's decision, R. S. McKnight, who appeared and participated in the hearing before the Land Board, sought review of the board's decision by writ of certiorari to this court.

RELIEF SOUGHT ON APPEAL

The State Land Board seeks affirmance of its decision determining that Erving Wolf is a proper lessee of the lands covered by mineral lease application numbers 19120, 19140 and 19141.

STATEMENT OF FACTS

The Land Board adopts the statement of facts appearing in the brief of petitioner, R. S. McKnight, as being essentially correct.

ARGUMENT

POINT I.

THE STATE LAND BOARD COULD ALLOW ERVING WOLF TO AMEND THE APPLICATIONS FILED ON HIS BEHALF BY VIRTUE OF RULE 6 OF THE RULES AND REGULATIONS OF THE UTAH STATE LAND BOARD.

The applications filed in the instant case by Erving Wolf were mineral lease applications for the purpose of recovering oil and gas (Ex. 1-A). Under the provisions of Section 65-1-97, U.C.A. 1953, the State Land Board is empowered to adopt rules and regulations relating to the leasing of state lands for the purpose of recovering oil and gas. The section provides:

> "The state land board may make and enforce rules and regulations *not inconsistent with the provisions of this act* for carrying the same into effect." (Emphasis added.)

Additionally, Section 65-1-6, U.C.A. 1953, provides:

> "The board may make *all needful rules and regulations not inconsistent with the provisions of this title* for carrying the same into effect."

Thus, the general power of the latter statute matches the specific power of the section relating to oil and gas leases and allows the Land Board to make rules and regulations in aid of carrying out the powers otherwise vested in the board by the Legislature. Acting in pursuit of the authority

contained in the above sections, the Utah State Land Board promulgated rules for the leasing of mineral interests of the state. Rule 6 of these rules provides in its pertinent part:

> "* * * If an applicant is determined to be deficient, it shall be returned to the applicant with instructions for its amendment or completion. If the application is resubmitted in satisfactory form within the time specified in the instructions, it shall retain its original filing time. If the application is resubmitted at any later time, it shall be deemed filed at the time of resubmission."

The provisions of Rule 6 allow the Land Board to accept an amendment to a deficient application without loss of priority in time. In the instant case, the application of Erving Wolf was found to be deficient in the following particulars (R. Finding of Fact, p. 3):

> "11. Each of the three applications filed by Erving Wolf, namely application numbers 19120, 19140 and 19141 were each deficient in the following particulars:
>
> a. They were not on current forms provided by the State Land Board.
>
> b. They did not include an offer to accept all of the requirements of the provisions of Title 65, Chapter 1, Utah Code Annotated, 1953, as amended, governing the issuances of oil and gas leases and operations thereunder.
>
> c. They were not accompanied with a

> statement under oath, over the applicant's signature, of his qualifications as an Applicant for Oil and Gas Leases as defined in Section 65-1-88 and as required by Section 65-1-88, U.C.A., 1953, as amended."

The Land Board determined that Rule 6 allowed the correction of these deficiencies (R. Concl. of L., p. 8). Petitioner has indicated in his brief, page 26, that the Attorney General advised the board that corrective action would be improper. Actually, the Attorney General merely submitted a brief in argument on the facts and contended therein that Rule 6 should be interpreted as allowing deficiencies in applications to be corrected only where they were defective on their face. Since the deficiencies in the applications of Erving Wolf were not of such a nature, the Attorney General contended Rule 6 did not apply and that under general principles of public land law, all the simultaneous applications should be rejected. The Land Board, however, interpreted Rule 6 as allowing the correction of deficiencies in applications where the deficiency was not apparent on its face. Therefore, the petitioner's theory of the case is not actually the issue before the court. Courts usually will not override an administrative agency's interpretation of its own rules unless the *interpretation* is obviously arbitrary or erroneous. *Bowles* v. *Mannie & Co.*, 155 F. 2d 129 (C.C.A., Ill.). The Land Board's interpretation of its own

rule has the effect, in the absence of unreasonableness, of becoming part of the regulation. *Foley* v. *Benedict*, 122 Tex. 193, 55 S.W. 2d 805; 42 Am. Jur., *Public Administrative Law*, Sec. 77. The interpretation of Rule 6 by the Land Board is not clearly arbitrary, and the language of the rule makes no distinction between deficiencies on the face of applications and those not readily apparent from the application itself. Since the language of the rule is reasonably susceptible to the interpretation placed on it by the Land Board, it cannot be said that the Land Board's interpretation was arbitrary. Therefore, that interpretation must be accepted by the court. *Equipment Distributors* v. *Porter*, 156 F.2d 296.

Rule 6, therefore, allows the correction of deficiencies in oil and gas lease applications without loss of priority of time. Therefore, the Land Board's actions, in allowing the amendment by Erving Wolf so as to correct deficiencies in the original applications, were in accordance with their own rules, which have the force of law when properly promulgated. *Standard Oil Co.* v. *Johnson*, 316 U.S. 481 (1942); *United States ex rel Accardi* v. *Shaughnessy*, 347 U.S. 260 (1953).

POINT II.

RULE 6 OF THE STATE LAND BOARD'S RULES FOR THE LEASING OF MINERAL INTERESTS ON

STATE LANDS IS A VALIDLY PROMULGATED RULE AND IS NOT INCONSISTENT WITH STATUTORY LAW.

Sections 65-1-6 and 65-1-97, U.C.A. 1953, allow the Land Board to promulgate rules to carry out its duties which under 65-1-14, U.C.A. 1953, include the "direction, management and control" of unappropriated state lands. This court has previously indicated that the Land Board has wide discretion in the handling and disposition of state lands, and that courts will not interfere in the exercise of that discretion unless the board acts in excess of its powers or jurisdiction. Thus, in *Whitmore* v. *Candland*, 47 Utah 77, 151 P. 528 (1915), this court stated:

> "* * * The whole matter of making disposition of the state's land was placed in the hands and under the control of the State Land Board. No right of appeal to the courts, or of reviewing the board's actions otherwise by the courts, except where lack or excess of power is alleged, has been given. All the courts can do, therefore, is to inquire into and determine in a proper proceeding whether the board has acted without or in excess of its powers or jurisdiction. Courts may not review the acts or conduct of the board, for the purpose of correcting mere irregularities."

See also *Miles* v. *Wells*, 22 Utah 55, 61 P. 534 (1900); *Safarik* v. *Udall*, 304 F. 2d 944 (1962); *Zarraga* v. *Texas Co.*, 284 F. 2d 657 (1960). These cases are in keeping with the legislative mandate in

Sections 65-1-6 and 65-1-97, U.C.A. 1953, that rules are only prohibited where they are "inconsistent with the provisions" of statutory law. Thus, the only issue is whether Rule 6 is consistent or inconsistent with statutory mandates. If the rule is consistent with the Legislature's directive, then the petitioner's writ should be vacated; if not, the writ should be made permanent, directing the Land Board to reject the previous applications of Erving Wolf and date the recent applications as of the actual date of filing. *Olsen* v. *State Tax Comm.*, 12 U.2d 42, 361 P. 2d 1112 (1961); *Kettner* v. *Snow*, No. 9659, Utah (October 5, 1962).

The cases cited in petitioner McKnight's brief do not concern fact situations where the administrative agency, Secretary of Interior, or Bureau of Land Management, had promulgated a rule allowing for deficiency amendment without loss of priority and, therefore, are not relevant to this case.[1] The only real issue of concern is whether Rule 6 is valid, or whether it is inconsistent with statutory interdiction. *Carlson* v. *Real Estate Comm.*, 38 Hawaii 9; Davis, *Administration Law Treatise*, Sec. 5.03. The general rule of construction of statutes and regulations is stated in 42 Am. Jur., *Public Administative Law*, Sec. 101:

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1 Even were the federal cases material to the issue presented in the instant case, the decision of *McKenna* v. *Seaton*, 259 F.2d 780 (1958), allowed the amendment of a federal oil and gas application without loss of priority.

> "Rules made in the exercise of a power delegated by statute should be construed together with the statute to make, if possible, an effectual piece of legislation in harmony with common sense and sound reason. The same rules of construction which apply to statutes govern the construction and interpretation of administrative rules and regulations. If it can fairly be done, the rule should be so construed and applied as to make it conform to the powers conferred upon the administrative body, rather than as being an assumption of power not conferred."

It is submitted that Rule 6 is not inconsistent with Section 65-1-88, U.C.A. 1953. This section provides:

> "* * * Applications must be accompanied by payment of the filing fee and rental for the first year together with a statement under oath over applicant's signature of his qualifications as required by this act."

Rule 6 in no way is contrary to this statute, nor does the statute prohibit the Land Board from allowing applications not meeting the requirements of Section 65-1-88, U.C.A. 1953, to be corrected without loss of priority. Rule 6 only allows the correction of deficiencies in the applications; it does not allow the applicant to correct deficiencies in his own status if at the time of filing the application he is not properly qualified. Therefore, 65-1-87, U.C.A. 1953, relating to qualifications of applicants, is not inconsistent with Rule 6. In the instant case, no claim was made that Erving Wolf was not a

properly qualified applicant at the time of filing the application, but only that the application was deficient. Therefore, keeping with the rule that statutes and administrative regulations should be construed in harmony, Rule 6 should be determined not to be inconsistent with statutory directives.

Further, many good and sufficient reasons exist that indicate that the Legislature did not intend Sections 65-1-87 and 88, U.C.A. 1953, to preclude the Land Board from allowing applications to be corrected. First, Section 65-1-87, U.C.A. 1953, merely sets out the qualifications for an applicant; if an applicant meets these qualifications it would seem absurd to allow a matter of form to preclude the board from issuing a lease that might otherwise be more beneficial to the State. This court recognized the merit to such a position in *Huber* v. *Deep Creek Irr. Co.*, 6 U. 2d 15, 305 P. 2d 478 (1956), where the court said with reference to an attack on a water right because of the failure to notarize an appropriation application:

> "* * * To deny one rights to such water because, at the possible expense of perjury, one did not notarize a final proof form until completion of all requests and corrections were made, some details of which one reasonably might believe would bear correction, — as here, — also would seem absurd."

Section 65-1-88, U.C.A. 1953, relating to the form of oil and gas applications, has as its purpose

to make certain that the applicant is qualified. However, if the board finds that the applicant is qualified, but that the application is not in proper form, they would certainly be justified allowing correction of the application. Not to so allow could be more injurious to the State than otherwise. The instant case graphically demonstrates this problem. Section 65-1-4~~b~~, U.C.A. 1953, provides for simultaneous filing in certain instances. The instant case involved a situation proper for simultaneous filing. In cases of simultaneous filing, Section 65-1-4~~b~~(b), U.C.A. 1953, provides that the Land Board shall issue leases to the highest bidded. The bids in the instant case were as follows:

Erving Wolf	No. 19120	No. 19140	No. 19141
	$2.59/acre	$2.59/acre	$2.59/acre
Joseph Sherman R. J. Hollberg	$2.01/acre	$2.34/acre	$2.34/acre
Paul S. Callister R. S. McKnight	$1.00/acre	$1.00/acre	$1.00/acre

Thus, if it were to be held that R. S. McKnight's position is correct, the State would stand to lose $1.59 per annum on the encompassed lands. The applications include approximately 2100 acres which would mean the State would lose about $3,300.00 annually.

For these reasons, it is submitted that the Land Board was fully justified in promulgating Rule 6 to allow for corrected applications without loss of priority and, further, that no clear inconsistency between the rule and statutory law exists. Therefore, the board's decision should be affirmed.

CONCLUSION

It is generally conceded that governmental agencies, charged with administrative responsibility, must have reasonable latitude in carrying out functions and duties of their administrative office. The State Land Board has attempted, by promulgating Rule 6, to provide a proper and reasonable means to assist in the leasing of state lands. There is nothing explicitly prohibitive of such regulation in statutory law, or nothing inconsistent with the reasonable interpretations of Title 65, dealing with oil and gas leasing on state lands.

It is, therefore, submitted that the Land Board's action should be affirmed and the writ of certiorari vacated.

Respectfully submitted,

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